

May 24, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LEGAL ISSUES RELATING TO POTENTIAL MORATORIUM ON APPROVALS FOR
RESIDENTIAL DEVELOPMENTS IN THE OTAY MESA AREA

On May 7, 1991, the City Council directed this office to report back by May 28, 1991, on legal issues relating to imposing a moratorium on approvals for residential projects in the Otay Mesa area. The direction arose out of a Council discussion on that date as to whether or not to proceed with studies which could result in construction and operation of a major airport on Otay Mesa. Planning Department staff has observed that it is not appropriate to consider discretionary permits for residential developments pending a determination of whether to approve the construction of a new airport on Otay Mesa. Such reasoning is, of course, based upon the fact that residential development would be inappropriate in areas which could be severely impacted by noise from a future airport.

As noted in the Planning Department report, none of the property in the community plan area under discussion has been rezoned from agricultural to a residential zone. In addition, none of the property owners have obtained approval of a precise plan, a vesting tentative map or a planned residential development, and no final environmental impact report has been certified to date for any project in the area. Under these circumstances, it does not appear necessary to impose a "moratorium," since no property owner is in a position to proceed with development in the area which may be impacted in the event a new airport is constructed other than that development permitted by the agricultural zone presently applicable to the area.

As an alternative, the City Council could adopt a resolution reflecting on the fact a new major airport may be constructed on Otay Mesa and if in fact such an airport is constructed, the noise and other impacts could make residential development inappropriate in major portions of the Otay Mesa area westerly of such airport. The resolution could also reflect that such an airport would almost certainly require a relocation of some of the presently proposed sites for public facilities, in particular schools, and that in the event it is determined to construct a new airport, the community plan would have to be substantially revised to show land uses which would be compatible with the new airport operation.

In the event any of the property owners from the area wish to proceed

with processing of proposed rezonings or discretionary permits or precise plans which could ultimately result in residential development in the area of potential impacts, the City Council has an adequate basis for continuing such matters or denying such matters pending a determination of whether or not an airport will be constructed.

A sample resolution is attached for your review.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachment
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